

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

MAY 31 2007

COURT OF APPEALS  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	2 CA-CR 2006-0182-PR
	)	2 CA-CR 2006-0322-PR
Respondent,	)	2 CA-CR 2007-0007-PR
	)	(Consolidated)
v.	)	DEPARTMENT A
	)	
GREGORY NIDEZ VALENCIA, JR.,	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
Petitioner.	)	Rule 111, Rules of
	)	the Supreme Court

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PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-51447

Honorable John E. Davis, Judge  
Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

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Gregory N. Valencia

Florence  
In Propria Persona

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V Á S Q U E Z, Judge.

¶1 A jury found petitioner Gregory Nidez Valencia, Jr. guilty of two counts of first-degree burglary and one count of first-degree felony murder, committed when Valencia was seventeen years old. The trial court sentenced him to concurrent, 7.5-year prison terms on the burglary convictions and to a term of natural life for felony murder. On appeal, this court vacated one of the burglary convictions but affirmed the remaining convictions and

sentences. *State v. Valencia*, No. 2 CA-CR 96-0652 (memorandum decision filed Apr. 30, 1998).

¶2 Valencia has subsequently filed at least seven petitions for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S., and five petitions for review, including the three consolidated here. In his first petition for post-conviction relief, Valencia raised numerous claims of ineffective assistance of trial counsel and requested a new trial. On review of the trial court's summary denial of relief, we granted partial relief and remanded the case to the trial court for an evidentiary hearing on the claim that trial counsel had rendered ineffective assistance by not moving to suppress Valencia's confession to police detectives. *State v. Valencia*, No. 2 CA-CR 01-0157-PR (memorandum decision filed Feb. 14, 2002).

¶3 Following that evidentiary hearing, the trial court concluded that Valencia's statements to the detectives had been voluntary and that the trial judge therefore would not have suppressed Valencia's statements even had counsel made such a motion. Because Valencia thus could not show prejudice resulting from trial counsel's performance, the trial court found Valencia had failed to present a colorable claim of ineffective assistance of counsel. We upheld that ruling on review. *State v. Valencia*, No. 2 CA-CR 2003-0270-PR (memorandum decision filed Jan. 4, 2005).

¶4 As best we can glean from the disjointed, partial post-conviction record available to us, Valencia filed his second petition for post-conviction relief in July 2003. The trial court treated that petition as a motion to reconsider its June 2003 ruling following

the evidentiary hearing we had ordered in ruling on Valencia's first petition for review. Valencia later apparently filed his third and fourth petitions on July 19 and July 27, 2005, and did not petition for review following the trial court's dismissal of those petitions in a minute entry filed on September 1, 2005.

¶5 In November 2005, Valencia filed his next notice of post-conviction relief. In the post-conviction petition that followed, his fifth, he attempted to cast as newly discovered evidence the fact that he allegedly had not been afforded the mandatory prehearing conference required by Rule 16, Ariz. R. Crim. P., 16A A.R.S., an omission he also ascribed to the ineffective assistance of counsel. The trial court summarily dismissed Valencia's petition in a minute entry filed on December 12, 2005. The court found Valencia had not alleged a colorable claim for relief and further found the issues precluded as having been either raised or waived in previous post-conviction proceedings. Valencia's untimely<sup>1</sup> petition for review of that ruling gave rise to our cause number 2 CA-CR 2006-0322-PR, one of the three cases consolidated here.

¶6 Valencia filed his sixth notice of and petition for post-conviction relief in January and February 2006. In the petition, he again alleged multiple instances of ineffective assistance by trial, appellate, and post-conviction counsel. The trial court denied relief in a minute entry filed on May 3, 2006, which states:

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<sup>1</sup>Rule 32.9(c) permits a party aggrieved by a trial court's ruling on a petition for post-conviction relief or motion for rehearing to petition for review within thirty days after the trial court's final decision. Valencia filed a motion for rehearing or reconsideration of the trial court's December 12 ruling, which the court denied on January 5, 2006. Valencia filed his petition for review more than eight months later, on September 12, 2006.

Petitioner's latest petition for post-conviction relief was filed on February 17, 2006, and brings several claims of ineffective assistance of counsel against Petitioner's trial counsel, appellate counsel and a post-conviction relief counsel. Most of the claims previously were raised to the Court of Appeals and Trial Court and previously ruled upon. These include 1) failure to object to the trial court not holding a preliminary examination, 2) failure to object to the jury instruction concerning immediate flight under A.R.S. § 13-1105, 3) failure to object to the trial court shifting the burden of judgment of acquittal upon the jury, 4) failure to object to inadmissible hearsay regarding co-defendant, 5) failure to object to the trial court's reasonable doubt instruction, 6) failure to object to State's closing argument regarding A.R.S. § 13-1105, 7) failure to request a pre-sentencing hearing, and 8) failure to object to trial court failing to sentence Petitioner under A.R.S. § 23-703.

After reading Petitioner's motion and the record, the Court finds no material issue[] of fact or law exists that would entitle Petitioner to relief. Petitioner has raised no issues that have not been raised before and decided on the merits. Therefore these claims are precluded. IT IS ORDERED, the Petition for Post-Conviction Relief is **DENIED**.

(Citations omitted.) Without waiting for a ruling on the motion for rehearing he had filed on May 12, Valencia filed a petition for review ten days later. It was filed under our cause number 2 CA-CR 2006-0182-PR, the earliest of the three cases consolidated here.

¶7 The third, filed under cause number 2 CA-CR 2007-0007-PR, followed the trial court's December 2006 dismissal of Valencia's seventh petition for post-conviction relief. That petition, filed on November 6, 2006, once again asserted numerous instances of alleged ineffective assistance by trial, appellate, and Rule 32 counsel. In a minute entry filed on December 12, 2006, the trial court dismissed the petition, stating:

By the Court's count, this is Petitioner's seventh petition for post-conviction relief. After reading the file and pleadings, the Court finds that all but one of the claims raised have been previously raised and ruled upon in earlier Rule 32 petitions and are therefore precluded by Rule 32.2, Arizona Rules of Crim. Procedure. The claim of ineffective assistance of trial counsel in failing to advise Petitioner of the consequences of not testifying at trial is precluded as it has been waived under Rule 32.2.

¶8 We will only disturb a trial court's ruling on a petition for post-conviction relief if the court has manifestly abused its discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find no such abuse here. Having already presented numerous claims of ineffective assistance of counsel in his first post-conviction petition, Valencia may not continue to assert and reassert such claims in an endless succession of subsequent petitions for post-conviction relief. *See* Ariz. R. Crim. P. 32.2(a)(2), (3); *State v. Mata*, 185 Ariz. 319, 336-37, 916 P.2d 1035, 1052-53 (1996). Valencia's claims are precluded, and the trial court correctly dismissed or denied relief on his fifth, sixth, and seventh petitions for post-conviction relief. Although we grant review on the consolidated petitions, we deny relief.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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JOSEPH W. HOWARD, Presiding Judge